HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.10756 of 1998

Between

K.Rajaprakash and another ..Petitioner

AND

Chief Security Commissioner, Railway Protection Force, Secunderabad and others ..Respondents

:: JUDGMENT ::

18.4.2007

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.10756 of 1998

This writ petition instituted by the two petitioners seeks a declaration that the action of the respondents in filling up the open competition vacancies of Railway Protection Force Constables, pursuant to the Employment Notice No.2 of 1996 dated 20.11.1996 by the candidates belonging to OBC category and S.C. category, is illegal. The Railway Protection Force, South Central Railway, Secunderabad had taken out Employment Notice No.2 of 1996 on 20.11.1996 proposing to fill up various vacancies of Railway Protection Force Constables and invited applications from eligible candidates therefor. In Secunderabad Division, a total of 120 vacancies are sought to be filled in, 60 of them with open competition candidates and 32 of them with OBC candidates and 17 with SC and 11 with ST category candidates. It is not in dispute that both the writ petitioners do belong to open competition category. The selection process involved a physical efficiency test followed by a written test and oral interview test. The candidates are required to secure minimum of 50% of marks to qualify in the written examination. For the physical efficiency test, 25 marks have been set apart and five components of the tests have been specified therein with each event carrying 5 marks. It has been specified that only such candidates who secure 15 marks out of 25 marks in the physical efficiency test alone will be declared to have qualified. Such of those candidates who are qualified in the physical efficiency test will be permitted to participate in

the written test and those who secure minimum of 50% of marks in the written examination will be declared to have qualified for the next test of viva voce/ I.Q. test carrying 10 marks. It has also been notified that such of those candidates who secure 60% of marks and above will be eligible for empanelment according to the merit order. Such candidates will be considered for offer of appointment as R.P.F. Constables. The writ petitioners are qualified in both the physical efficiency test and written examination, and they were subjected to viva voce test. But unfortunately, their names did not figure in the list of the selected candidates. When the list of the selected candidates revealed the inclusion of the names of several candidates who belonged to either OBC category or SC category, they entertained an apprehension that the respondent authorities have mixed up various principles of selection based on merit and as a result of their confusion, instead of selecting the open category candidates, they have selected the candidates belonging to OBC and SC categories beyond the number of vacancies reserved for such categories.

Sri Gowri Shankar Sanghi, learned Standing Counsel for the Railways has produced before me the record relating to the selection for recruitment to the posts of R.P.F. Constables. The record disclosed that both the petitioners have been awarded 25 out of 25 marks for the physical efficiency test. The first petitioner secured 13.5 marks in the written test and 6 marks for the viva voce test. He secured a total of 44.5 marks whereas the second petitioner has secured 12.5 marks in the written examination and 5 marks in the viva voce test. Thus, he secured a total of 42.5 marks. The last candidate of the open category to be selected had secured 48 marks. Thus, the writ petitioners have not been selected not for any other reason, but for their lesser merit order in the over all merit ranking drawn by the respondent authority.

It is necessary to point out here that some of the candidates belonging to the OBC category and SC category have secured in all more marks than the last of the selected candidates viz., who secured 48 marks. Thus, by virtue of their pure merit ranking, the candidates belonging to OBC and SC categories are bound and entitled to be treated to have been selected against open category posts. The principle of reservation requiring the Railways to set apart certain percentage of vacancies for compulsorily filling up with the candidates of OBC, SC and ST categories as the case may be, is to ensure that such number of candidates should invariably get selected. The percentage fixed is reflective of the minimum intake, which is compulsorily to be undertaken by the Railway administration. It is not a sealing on their intake. In other words, more number of candidates than the minimum percentage of vacancies set apart for the respective categories can be selected. If a reserved category candidate belonging to OBC, SC or ST category is able to compete and stake his claim for selection along with an open competition candidate, such reserved category candidate is liable to be treated only as open category candidate, but not as a candidate belonging to reserved category in the matter of employment. To that extent, he is recruited over and above the minimum percentage of vacancies set apart for the reserved categories and is not liable to be treated or counted as one amongst the reserved category candidates. He proved his merit along with any other candidate who competed against open competition vacancy. Therefore, I find no illegality or irregularity in the selection of such reserved category candidates who have secured more marks than the last ranked open category candidate and thus, the selection of such candidates against the open category vacancies cannot be faulted at all.

Lastly, Sri S.Agasthya Sarma, learned counsel for the writ petitioners submits that as against 390 vacancies of the R.P.F. Constables sought to be filled in by the South Central Railway, only 355 candidates have reported for training leaving a short fall of nearly 35 candidates and if only, the Railway administration had filled in this shortfall with the next meritorious candidates, then the writ petitioners would have been selected. I am afraid that I cannot express any opinion on this aspect of the matter. If some of the selected candidates have not reported for undergoing the training to enable them to be appointed later on, thus leaving certain vacancies unfilled, it is for the Railway administration to consider to fill them up with the next meritorious candidates who have undergone the selection process. It is equally open to the employer not to fill them up at all or to decide to fill them up at the next round of selections. But however, in case, the Railway administration decides to fill them up with the next meritorious candidates from the present list of selections, the Railway administration is bound to fill them up strictly in accordance with the order of merit. It cannot pick and choose from the candidates who have participated in the selection. I therefore leave it open to the Railway administration to take appropriate decision in the matter and in the event it decides to fill up the unfilled vacancies of R.P.F. Constables, it may do so by strictly following the merit list of the candidates.

With this, the writ petition stands disposed of. No costs. Consequently, W.P.M.P.No.41296 of 1998 also stands disposed of.

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NOOTY RAMA MOHANA RAO.J.

18.4.2007
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